

# COMMITTEE REPORT

## MADAM PRESIDENT:

**The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 92, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:**

- 1           Page 5, between lines 30 and 31, begin a new paragraph and insert:  
2           "SECTION 3. IC 35-38-1-7.5, AS AMENDED BY P.L.216-2007,  
3           SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4           JULY 1, 2009]: Sec. 7.5. (a) As used in this section, "sexually violent  
5           predator" means a person who suffers from a mental abnormality or  
6           personality disorder that makes the individual likely to repeatedly  
7           commit a sex offense (as defined in IC 11-8-8-5.2). The term includes  
8           a person convicted in another jurisdiction who is identified as a  
9           sexually violent predator under IC 11-8-8-20. The term does not  
10          include a person no longer considered a sexually violent predator under  
11          subsection (g).  
12          (b) A person who:  
13               (1) being at least eighteen (18) years of age, commits an offense  
14               described in:  
15                   (A) IC 35-42-4-1;  
16                   (B) IC 35-42-4-2;  
17                   (C) IC 35-42-4-3 as a Class A or Class B felony;  
18                   (D) IC 35-42-4-5(a)(1);  
19                   (E) IC 35-42-4-5(a)(2);  
20                   (F) IC 35-42-4-5(a)(3);

- 1 (G) IC 35-42-4-5(b)(1) as a Class A or Class B felony;  
2 (H) IC 35-42-4-5(b)(2);  
3 (I) IC 35-42-4-5(b)(3) as a Class A or Class B felony;  
4 (J) an attempt or conspiracy to commit a crime listed in  
5 clauses (A) through (I); or  
6 (K) a crime under the laws of another jurisdiction, including  
7 a military court, that is substantially equivalent to any of the  
8 offenses listed in clauses (A) through (J);  
9 (2) commits a sex offense (as defined in IC 11-8-8-5.2) while  
10 having a previous unrelated conviction for a sex offense for which  
11 the person is required to register as a sex or violent offender under  
12 IC 11-8-8;  
13 (3) commits a sex offense (as defined in IC 11-8-8-5.2) while  
14 having had a previous unrelated adjudication as a delinquent child  
15 for an act that would be a sex offense if committed by an adult, if,  
16 after considering expert testimony, a court finds by clear and  
17 convincing evidence that the person is likely to commit an  
18 additional sex offense; or  
19 (4) commits a sex offense (as defined in IC 11-8-8-5.2) while  
20 having had a previous unrelated adjudication as a delinquent child  
21 for an act that would be a sex offense if committed by an adult, if  
22 the person was required to register as a sex or violent offender  
23 under IC 11-8-8-5(b)(2);  
24 is a sexually violent predator. Except as provided in subsection (g) or  
25 (h), a person is a sexually violent predator by operation of law if an  
26 offense committed by the person satisfies the conditions set forth in  
27 subdivision (1) or (2) and the person was released from incarceration,  
28 secure detention, or probation for the offense after June 30, 1994.  
29 (c) This section applies whenever a court sentences a person or a  
30 juvenile court issues a dispositional decree for a sex offense (as defined  
31 in IC 11-8-8-5.2) for which the person is required to register with the  
32 local law enforcement authority under IC 11-8-8.  
33 (d) At the sentencing hearing, the court shall indicate on the record  
34 whether the person has been convicted of an offense that makes the  
35 person a sexually violent predator under subsection (b).  
36 (e) If a person is not a sexually violent predator under subsection  
37 (b), the prosecuting attorney may request the court to conduct a hearing  
38 to determine whether the person (including a child adjudicated to be a

delinquent child) is a sexually violent predator under subsection (a). If the court grants the motion, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person is a sexually violent predator under subsection (a). A hearing conducted under this subsection may be combined with the person's sentencing hearing.

(f) If a person is a sexually violent predator:

(1) the person is required to register with the local law enforcement authority as provided in IC 11-8-8; and

(2) the court shall send notice to the department of correction.

(g) This subsection does not apply to a person who has two (2) or more unrelated convictions for an offense described in IC 11-8-8-4.5 for which the person is required to register under IC 11-8-8. A person who is a sexually violent predator may petition the **sentencing court or the adjudicating juvenile court (if the person was convicted or adjudicated in Indiana), or the circuit or superior court with jurisdiction in the county in which the person resides (if the person was not convicted or adjudicated in Indiana)**, to consider whether the person should no longer be considered a sexually violent predator. The person may file a petition under this subsection not earlier than ten (10) years after:

(1) the sentencing court or juvenile court makes its determination under subsection (e); or

(2) the person is released from incarceration or secure detention.

A person may file a petition under this subsection not more than one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a hearing to determine if the person should no longer be considered a sexually violent predator. If the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person **has proved by a preponderance of the evidence (if the person has been found to be a sexually violent predator under subsection (e)), or by clear and**

**convincing evidence (if the person is a sexually violent predator under subsection (b)), that the person** should no longer be considered a sexually violent predator under subsection (a). If a court finds that the person should no longer be considered a sexually violent predator, the court shall send notice to the department of correction that the person is no longer considered a sexually violent predator. Notwithstanding any other law, a condition imposed on a person due to the person's status as a sexually violent predator, including lifetime parole or GPS monitoring, does not apply to a person no longer considered a sexually violent predator.

(h) A person is not a sexually violent predator by operation of law under subsection (b)(1) if all of the following conditions are met:

(1) The victim was not less than twelve (12) years of age at the time the offense was committed.

(2) The person is not more than four (4) years older than the victim.

(3) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.

(4) The offense committed by the person was not any of the following:

(A) Rape (IC 35-42-4-1).

(B) Criminal deviate conduct (IC 35-42-4-2).

(C) An offense committed by using or threatening the use of deadly force or while armed with a deadly weapon.

(D) An offense that results in serious bodily injury.

(E) An offense that is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(5) The person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person.

(6) The person did not have a position of authority or substantial influence over the victim.

1 (7) The court finds that the person should not be considered a  
2 sexually violent predator."

3 Page 6, between lines 25 and 26, begin a new paragraph and insert:

4 "SECTION 5. IC 35-42-4-11, AS AMENDED BY P.L.216-2007,  
5 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
6 JULY 1, 2009]: Sec. 11. (a) As used in this section, and except as  
7 provided in subsection (d), "offender against children" means a person  
8 required to register as a sex or violent offender under IC 11-8-8 who  
9 has been:

10 (1) found to be a sexually violent predator under IC 35-38-1-7.5;

11 or

12 (2) convicted of one (1) or more of the following offenses:

13 (A) Child molesting (IC 35-42-4-3).

14 (B) Child exploitation (IC 35-42-4-4(b)).

15 (C) Child solicitation (IC 35-42-4-6).

16 (D) Child seduction (IC 35-42-4-7).

17 (E) Kidnapping (IC 35-42-3-2), if the victim is less than  
18 eighteen (18) years of age and the person is not the child's  
19 parent or guardian.

20 (F) Attempt to commit or conspiracy to commit an offense  
21 listed in clauses (A) through (E).

22 (G) An offense in another jurisdiction that is substantially  
23 similar to an offense described in clauses (A) through (F).

24 A person is an offender against children by operation of law if the  
25 person meets the conditions described in subdivision (1) or (2) at any  
26 time.

27 (b) As used in this section, "reside" means to spend more than three

28 (3) nights in:

29 (1) a residence; or

30 (2) if the person does not reside in a residence, a particular  
31 location;

32 in any thirty (30) day period.

33 (c) An offender against children who knowingly or intentionally:

34 (1) resides within one thousand (1,000) feet of:

35 (A) school property, not including property of an institution  
36 providing postsecondary education;

37 (B) a youth program center; or

38 (C) a public park; or

(2) establishes a residence within one (1) mile of the residence of the victim of the offender's sex offense; commits a sex offender residency offense, a Class D felony.

(d) This subsection does not apply to an offender against children who has two (2) or more unrelated convictions for an offense described in subsection (a). A person who is an offender against children may petition the **sentencing court or the adjudicating juvenile court (if the person was convicted or adjudicated in Indiana), or the circuit or superior court with jurisdiction in the county in which the person resides (if the person was not convicted or adjudicated in Indiana)**, to consider whether the person should no longer be considered an offender against children. The person may file a petition under this subsection not earlier than ten (10) years after the person is released from incarceration, probation, or parole, whichever occurs last. A person may file a petition under this subsection not more than one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a hearing to determine if the person should no longer be considered an offender against children. If the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person **has proved by clear and convincing evidence that the person** should no longer be considered an offender against children. If a court finds that the person should no longer be considered an offender against children, the court shall send notice to the department of correction that the person is no longer considered an offender against children."

Page 6, line 28, delete "convicted" and insert "**who commits**".

Page 6, line 29, delete "of".

- 1 Page 6, line 29, after "11-8-8-5.2)" delete "." and insert "**after June**
- 2 **30, 2009.**".
- 3 Page 7, line 4, after "person" insert "**not on probation or parole**".
- 4 Renumber all SECTIONS consecutively.  
(Reference is to SB 92 as introduced.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 5, Nays 3.

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**Steele**

**Chairperson**